

Assembly Bill No. 1243

CHAPTER 609

An act to amend Sections 11517, 13000, 44975, 46003, 46003.5, 77002, 77007.5, 77008, 77030, 77032, 77034, 77090, 77091, 77093, 77095, 77096, 77097, and 77123 of, to add Sections 58897, 77003.5 and 77003.6 to, to repeal Section 46008 of, and to add Article 4 (commencing with Section 11480) to Chapter 1 of Division 6 of, the Food and Agricultural Code, and to amend Sections 110820, 110835, 110935, and 110958 of the Health and Safety Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor October 5, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1243, Committee on Agriculture. Pesticides: agricultural products: marketing.

(1) Existing law sets forth provisions governing pesticides. Existing law requires various persons who engage in the business of agricultural pest control operations to be licensed or hold a certificate issued by the Department of Pesticide Regulations. Fees are imposed for the issuance of those licenses and certificates.

This bill would specifically provide a procedure for the making of refunds of specified fees by the Director of Pesticide Regulations, and would make a continuous appropriation for that purpose.

(2) Under existing law, any person whose license or certificate is revoked, or whose application for such a license or certificate is denied for reasons other than his or her failure to satisfy examination requirements, is ineligible to apply or reapply for the same kind of license or certificate for a period of 3 years from the effective date of the decision to deny or revoke the license or certificate.

This bill would specifically make the provisions applicable to prescribed persons and other licenses, as specified.

(3) Under existing law, various actions brought under specified provisions relating to pesticides are required to be brought within 2 years of the occurrence of the violation.

This bill would require the director to bring an action to collect unpaid mill assessments and delinquent fees, or an action to collect civil penalties, as specified, within 4 years.

(4) Under existing law, commencing July 1, 1992, the fee paid to the Secretary of Agriculture by avocado handlers for inspection and certification is not to be greater than 18¢ per hundredweight of pounds prepared for market.

This bill would reinstate the fee limitation of 25¢ per hundredweight of pounds prepared for market that was in effect from July 1, 1990, to June 30, 1992.

This bill would also authorize market orders to contain provisions for the establishment and operation of an indemnity trust fund to cover catastrophic events, as prescribed.

(5) Existing law establishes the Organic Food Advisory Board, as prescribed, to advise the Secretary of Agriculture of his or her responsibilities, as specified.

This bill would make a technical change concerning alternate members of the board.

(6) Existing law requires the Organic Food Advisory Board to promulgate regulations concerning prohibited materials, as prescribed, and refers to an organic foods production association.

This bill would revise that reference.

(7) Existing law establishes the California Walnut Commission and authorizes the commission to promote the sale of walnuts by advertising and other promotional means, to educate and instruct the wholesale and retail trade in foreign markets, to make market surveys and analyses, and to conduct marketing research.

This bill would authorize the commission to promote the sale of walnuts for the purpose of creating, maintaining, and expanding domestic and foreign markets, to educate and instruct the wholesale and retail trade in domestic markets with regard to proper methods of handling and selling walnuts, and to present facts to, and negotiate with, local, state, federal, and foreign agencies on matters that affect the walnut industry, as prescribed. The bill would authorize the commission to conduct research, to accept prescribed funds and to make contributions to other entities for the purposes of maintaining, promoting, and enhancing the walnut industry, as specified, and to collect information, and to publish and distribute a bulletin to persons subject to regulation under these provisions. The bill would revise and make additional findings and declarations concerning the maintenance and expansion of the California walnut industry. The bill would revise the definitions of prescribed terms for purposes of these provisions.

(8) Under existing law, the provisions relating to the Walnut Commission may not become operative until a referendum is conducted. To be valid, at least 40% of the producers must participate in the referendum, and either 60% or more of the producers eligible to participate vote in favor of the provisions and these producers marketed a majority of the total quantity of walnuts produced; or a majority of the eligible producers vote in favor and they marketed 60% or more of the total quantity of the walnuts produced.

This bill would require that both a majority of producers who are affiliated with a cooperative handling walnuts, and a majority of

producers who are not so affiliated, as prescribed, vote in favor of the provisions.

(9) Existing law provides prerequisites in order for food to be sold as organic, to include a specified time period since a prohibited substance was applied.

This bill would eliminate these requirements for fields or management units registered, as prescribed, prior to January 1, 1995, and during the 1995 calendar year.

This bill would also make technical changes relating to lists of approved ingredients for organic food.

(10) Existing law authorizes the Director of Health Services to adopt regulations concerning prohibited substances for processing food.

This bill would expand this authority to include the adoption of administrative lists, as prescribed.

(11) Existing law requires that on or before January 1, 1994, the Secretary of Agriculture and the Director of Health Services prepare reports to the Legislature concerning enforcement activities involving organic food.

This bill would delete that requirement.

(12) Existing law requires the Director of Health Services to prepare a report concerning information collected pursuant to the registration of persons involved with organic food processing.

This bill would make the report an annual report and require it to be submitted to the Organic Food Advisory Board.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 4 (commencing with Section 11480) is added to Chapter 1 of Division 6 of the Food and Agricultural Code, to read:

Article 4. Refunds

11480. "Fee," as used in this article, includes, but is not limited to, any application fee, license fee, permit fee, inspection fee, certification fee, registration fee, identification fee, analysis fee, certificate fee, or delinquent fee.

11481. (a) The director may authorize the refund of any money that is received or collected by the department in the payment of any fee, assessment, or tax, except that the director shall not authorize a refund of any money received by the department pursuant to a settlement agreement, stipulated judgment, or similar document or if the refund request is submitted more than four years after the payment was made.

(b) An amount equal to the amount of the refund is, notwithstanding Section 13340 of the Government Code, hereby

continuously appropriated without regard to fiscal years, from the funds into which the fees were deposited, to the director to make the refunds.

11482. A refund may be made in whole or in part in any of the following instances:

(a) A refund of a fee is requested by the payer before any examination, review, inspection, or similar activity has been performed or services rendered by the department for the payer.

(b) The payment of a fee, assessment, or tax represents an overpayment, payment in duplicate, payment in error in law, or payment through error of the payer or the department.

11483. The fiscal officer of the department shall make payment of any refund pursuant to this article upon the submission to the fiscal officer of a voucher prepared by the director, or his or her designee, that sets forth the facts that pertain to the refund and authorizes its payment.

11484. If any money that is to be refunded has been deposited in the State Treasury, the Controller, upon receipt of a claim that is filed by the department, shall transfer that amount from the fund to which the money is credited to the director for payment of the refund.

11485. If the director finds that the amount of any refund is less than fifty dollars (\$50), the director may retain the amount for use for the same purpose for which the original payment was made, unless the payment was made in error in law, in which case the director shall refund the amount.

SEC. 2. Section 11517 of the Food and Agricultural Code is amended to read:

11517. Any person whose license or certificate issued pursuant to this division, Chapter 3.4 (commencing with Section 14090), or Chapter 3.6 (commencing with Section 14151) of Division 7 is revoked, or whose application for such a license or certificate is denied for reasons other than his or her failure to satisfy examination requirements, is ineligible for a period of three years from the effective date of the decision to deny or revoke the license or certificate to apply or reapply as an individual, a business, or officer, director, administrator, or owner with a 10 percent or greater interest in a business, whichever is applicable, for the same kind of license or certificate or another license or certificate issued by the department if the grounds for the revocation or denial are determined by the department to be directly relevant to the functions, duties, or responsibilities of that other license or certificate.

SEC. 3. Section 13000 of the Food and Agricultural Code is amended to read:

13000. (a) Except as provided in subdivision (b), an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, within two

years of the occurrence of the violation. However, when an investigation is completed and submitted to the director, the action shall be commenced within one year of that submission.

(b) An action brought by the director to collect unpaid mill assessments and delinquent fees required by Article 4.5 (commencing with Section 12841) or an action brought by the director to collect civil penalties pursuant to Section 12999.4 for violations of Article 4.5 (commencing with Section 12841) or Section 12993 shall be commenced within four years of the occurrence of the violation.

SEC. 4. Section 44975 of the Food and Agricultural Code is amended to read:

44975. (a) Each handler of avocados shall pay to the director an inspection and certification fee each month. The fee shall be based on the number of pounds certified as determined by the director. However, in no event shall the fee be greater than twenty-five cents (\$0.25) per hundredweight of pounds prepared for market. The number of pounds certified shall be reported monthly to the director, and these reports shall include all information required by the director. The fee required by this section shall be paid no later than the 10th day of the month following the month for which the fee is payable. Any handler who fails to pay the fee within the time required shall pay the director a penalty of 10 percent of the amount determined to be due, and, in addition, $1\frac{1}{2}$ percent interest per month on the unpaid balance. The director may adjust the fee from time to time and reduce it whenever he or she finds the cost of administering this article may be defrayed from revenue derived from lower fees.

(b) Notwithstanding subdivision (a), whenever the fees derived from pounds certified do not cover the cost of inspection, the director may establish hourly and mileage rates for inspection and certification of avocados based upon the cost of providing that inspection and certification. However, alternatively, a handler may present his or her avocados for inspection and certification on a date, time, and location specified by the director and pay the fees charged pursuant to subdivision (a).

SEC. 5. Section 46003 of the Food and Agricultural Code is amended to read:

46003. (a) The secretary shall establish an advisory board, which shall be known as the Organic Food Advisory Board, for the purpose of advising the secretary with respect to his or her responsibilities under this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The advisory board shall be comprised of 14 members. Each member may have an alternate. Six members and their alternates shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members and their alternates



shall be processors, one member and that member's alternate shall be a handler or a retailer, two members and their alternates shall be consumer representatives, one member and that member's alternate shall be an environmental representative, and two members and their alternates shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science. Except for the consumer, environmental, and technical representatives, the members of the advisory board and their alternates shall have derived a substantial portion of their business income, wages, or salary from the production, handling, processing, or retailing of food sold as organic for at least three years preceding their appointment to the advisory board. The consumer and environmental representatives and their alternates shall not have a financial interest in the organic food industry and shall be representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The technical representatives and their alternates shall not have a financial interest in the organic food industry.

(c) An alternate member shall serve at an advisory board meeting only in the absence of, and shall have the same powers and duties as, the member for whom he or she is representing as alternate, except for duties and powers as an officer of the board. The number of alternates present who are not serving in the capacity of a member shall not be considered in determining a quorum.

(d) An alternate member shall serve at an advisory board subcommittee meeting only in the absence of, and shall have the same powers and duties as, the member for whom he or she is designated as alternate, except for duties and powers as a subcommittee chairperson.

(e) The members of the advisory board and their alternates described in subdivision (b) shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory board and approved by the secretary.

(f) The State Director of Health Services, or his or her representative, and a county agricultural commissioner shall be appointed as ex officio members of the advisory board.

SEC. 6. Section 46003.5 of the Food and Agricultural Code is amended to read:

46003.5. (a) Following the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Secs. 6501 to 6522, incl.), the secretary, in consultation with the Organic Food Advisory Board, shall adopt regulations listing specific substances that are in compliance or not in compliance with the definition of "prohibited materials," as defined in subdivision (p) of

Section 110815 of the Health and Safety Code, for use in the production and handling of organic foods.

Prior to the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990, the Organic Food Advisory Board, in consultation with the secretary, shall determine which, if any, substance may be allowed for use in the production and handling of organic foods in this state. Within 90 days of promulgation of the national materials list by the United States Department of Agriculture, the Organic Food Advisory Board, in consultation with the secretary, shall determine which, if any, substance allowed for use by the national materials list may be allowed for use in the production and handling of organic foods in this state.

(b) Prior to adoption of these regulations, the secretary shall issue administratively a preliminary, nonexhaustive list of materials that are in compliance or not in compliance with subdivision (p) of Section 110815 of the Health and Safety Code based on the listings of permitted materials published by California Certified Organic Farmers, the Organic Trade Association, and the Departments of Agriculture of the States of Oregon and Washington.

SEC. 7. Section 46008 of the Food and Agricultural Code is repealed.

SEC. 8. Section 58897 is added to the Food and Agricultural Code, to read:

58897. To address catastrophic events, a marketing order may contain provisions for the establishment and operation of an indemnity trust fund to cover livestock and livestock product losses due to disease, natural disaster, or accidents.

SEC. 9. Section 77002 of the Food and Agricultural Code is amended to read:

77002. The maintenance and expansion of the walnut industry of California is necessary to ensure the consuming public of a continuous supply of this vital food and the maintenance of needed levels of income for those engaged in the walnut industry of this state.

SEC. 10. Section 77003.5 is added to the Food and Agricultural Code, to read:

77003.5. The establishment of the commission is necessary for the efficient development and management of a national and international advertising and promotion program that will enhance the reputation of the California walnut industry, create a more receptive environment for the industry and its products, and increase competitiveness of the California walnut industry within the national and international marketplace. The commission is necessary to carry out the California walnut industry's commitment to responsible stewardship and increasingly efficient cultural practices.

SEC. 11. Section 77003.6 is added to the Food and Agricultural Code, to read:

77003.6. The successes that the walnut industry of California have enjoyed have come about in part through a commitment to industry-funded research that has led to significant improvements in the quality of the walnuts available to consumers and increasingly efficient cultural practices resulting in increased awareness of, and a more receptive environment for, the production and marketing of walnuts in domestic and foreign markets. It has also led to walnuts being a better consumer value. The establishment of the commission will maintain and enhance this research effort and make it possible for the walnut industry to realize its potential, resulting in increased consumer value and enhanced producer returns.

SEC. 12. Section 77007.5 of the Food and Agricultural Code is amended to read:

77007.5. Opportunity exists for continued growth and expansion of the walnut industry by creating new markets. The success of that expansion program is uniquely dependent upon effective advertising, promotion, and research since the creation of new markets is essentially a matter of educating and informing people of the use, nutritional value, and availability of the commodity and enhancing the reputation of the California walnut industry. The expansion of the walnut industry also provides an important source of jobs for many people in this state, a high proportion of whom reside in historically depressed areas of the state, and serves to ensure the preservation of an agrarian society.

SEC. 13. Section 77008 of the Food and Agricultural Code is amended to read:

77008. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of walnuts the opportunity to avail themselves of the benefits of collective action in the broad fields of development, maintenance, and expansion of markets, advertising, promotion, marketing research, public information and education, and production and processing research necessary to achieve the purposes stated in this chapter.

SEC. 14. Section 77030 of the Food and Agricultural Code is amended to read:

77030. "Marketing research" means any research relating to the marketing of walnuts in domestic or foreign markets.

SEC. 15. Section 77032 of the Food and Agricultural Code is amended to read:

77032. "Producer" means any person in this state who grows walnuts for market and who, upon request, provides proof of commodity sale. "Producer" does not include any person who markets 2,000 pounds or less of walnuts during a market year.

SEC. 16. Section 77034 of the Food and Agricultural Code is amended to read:

77034. “Advertising and sales promotion” means, in addition to its ordinarily accepted meaning, any plan directed toward increasing the sale of walnuts in domestic or foreign markets. No advertising or sales promotion plan shall make use of false or unwarranted claims on behalf of any product, or disparage the quality, value, sales, or use of any other commodity.

SEC. 17. Section 77090 of the Food and Agricultural Code is amended to read:

77090. The commission may promote the sale of walnuts by brand and generic advertising and other promotional means, including tie-in advertising, for the purpose of creating, maintaining, and expanding domestic and foreign markets.

SEC. 18. Section 77091 of the Food and Agricultural Code is amended to read:

77091. The commission may educate and instruct the wholesale and retail trade in domestic and foreign markets with respect to proper methods of handling and selling walnuts.

SEC. 19. Section 77093 of the Food and Agricultural Code is amended to read:

77093. The commission may present facts to, and negotiate with, local, state, federal, and foreign agencies on matters that affect the walnut industry pursuant to this chapter.

SEC. 20. Section 77095 of the Food and Agricultural Code is amended to read:

77095. The commission may conduct, and contract with others to conduct, research, including the study, analysis, accumulation, and dissemination of information obtained from the research or elsewhere, respecting this chapter.

SEC. 21. Section 77096 of the Food and Agricultural Code is amended to read:

77096. The commission may accept contributions of, or match, private, state, or federal funds and employ or make contributions of funds to other persons or state or federal agencies for purposes of maintaining, promoting, and enhancing the walnut industry pursuant to this chapter.

SEC. 22. Section 77097 of the Food and Agricultural Code is amended to read:

77097. The commission may collect information, including, but not limited to, industry crop statistics, and may publish and distribute without charge a bulletin or other communication for dissemination of information to persons subject to this chapter.

SEC. 23. Section 77123 of the Food and Agricultural Code is amended to read:

77123. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds in a referendum vote conducted by the secretary that at least 40 percent of the total number of producers from the list

established by the secretary pursuant to this article participate and that all of the following occurred:

(a) A majority of the producers voting in the referendum who are not affiliated with a cooperative handling walnuts voted in favor of this chapter, and the producers so voting marketed a majority of the total quantity of walnuts marketed in the preceding marketing year by all those producers who voted in the referendum.

(b) A majority of the producers voting in the referendum who are affiliated with a cooperative handling walnuts voted in favor of this chapter, and the producers so voting marketed a majority of the total quantity of walnuts marketed in the preceding marketing year by all those producers who voted in the referendum.

SEC. 24. Section 110820 of the Health and Safety Code is amended to read:

110820. Except as otherwise provided in this article, no food shall be sold as organic unless it consists entirely of any of the following:

(a) Raw agricultural commodities that meet the following requirements:

(1) The commodity has been produced and handled without any prohibited material or color additive having been applied, and without irradiation.

(2) In the case of any raw agricultural commodity produced from seed, the seed has not been treated with any prohibited material. If untreated seed is not available, seed treated with a fungicide may be used, except for seed used for sprouts and other raw agricultural commodities, as described in paragraph (6).

(3) In the case of perennial crops:

For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code commencing January 1, 1996, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 36 months prior to harvest.

(4) In the case of annual or two-year crops:

For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code commencing January 1, 1996, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 36 months prior to harvest.

(5) In the case of any raw agricultural commodity that is grown in any growing medium, such as fungi grown in compost or transplants grown in potting mix:

(A) The growing medium must have been manufactured or produced:

(i) Without any prohibited material having been included in the medium.

(ii) Without any prohibited material having been applied to the area where the medium is manufactured or produced during seeding or inoculation of the medium.

(iii) Using methods that will minimize the migration or accumulation of any pesticide chemical residue in food grown in the medium.

(B) No prohibited material shall have been applied to the area where the commodity is grown during seeding or inoculation. If a prohibited material is applied in the area prior to seeding or inoculation, a residue test shall be performed on the commodity grown from that seeding or inoculation.

(6) In the case of sprouts and other raw agricultural commodities as described in subparagraph (B):

(A) The seed shall have been organically produced, handled, and processed in accordance with this article. No prohibited material shall have been applied to the seed or to the area in which the commodity is grown after introduction of the seed.

(B) This paragraph and the requirements of paragraphs (4) and (5), where applicable, shall apply to raw agricultural commodities that are grown directly from seed through either of the following methods:

(i) Without soil or growing medium other than water.

(ii) On a soil or growing medium and seeded at a rate greater than one ounce per square foot (2,722 pounds per acre).

(b) Processed food manufactured only from raw agricultural commodities as described in subdivision (a), except as follows:

(1) Water, air, and salt may be added to the processed food.

(2) Ingredients other than raw agricultural commodities as described in subdivision (a) may be added to the processed food if these ingredients are included in the California administrative list of materials approved for organic food processing or the national list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the federal Organic Foods Production Act (7 U.S.C. Sec. 6501 et seq.) and do not represent more than 5 percent of the weight of the total finished product, excluding salt and water.

(c) Processed food manufactured only from a combination of raw agricultural commodities as described in subdivision (a) and processed food as described in subdivision (b).

(d) (1) Meat, fowl, fish, dairy products, or eggs that are produced, distributed, and processed without any prohibited material having been applied or administered, except as provided in paragraph (2) with respect to dairy products.

(2) For the first 10 months of the year prior to the taking of the milk, 80 percent of any feed administered to dairy livestock shall be comprised of materials in compliance with the regulations adopted pursuant to Section 14904 of the Food and Agricultural Code. For the final two-month period prior to the taking of the milk, 100 percent

of any feed administered to the dairy livestock shall be in compliance with the regulations adopted pursuant to Section 14904 of the Food and Agricultural Code.

SEC. 25. Section 110835 of the Health and Safety Code is amended to read:

110835. The director may adopt regulations or administrative lists of specific substances that are in compliance or not in compliance with subdivision (p) of Section 110815 for use in the processing of foods under the enforcement jurisdiction of the department.

SEC. 26. Section 110935 of the Health and Safety Code is amended to read:

110935. The director shall maintain in a central location, and make publicly available for inspection and copying, upon request, a list of all penalties levied within the past five years, including the amount of each penalty, the party against whom the penalty was levied, and the nature of the violation. The list also shall be available by mail, upon written request and payment of a reasonable fee, as determined by the director.

SEC. 27. Section 110958 of the Health and Safety Code is amended to read:

110958. Annually, the director shall compile and publish and submit to the Organic Food Advisory Board a summary of information collected under Section 110875, including, but not limited to, the following:

- (a) The total number of registrations received under this section.
- (b) The total number and quantity of each type of product sold as organic by all registrants combined.
- (c) The total annual organic gross sales volume of all registrants combined, and the median gross annual organic sales of all registrants.
- (d) The names of all registrants.
- (e) The number of registrants in each of the following ranges of annual gross sales volume:
 - (1) \$0–\$5,000
 - (2) \$5,001–\$10,000
 - (3) \$10,001–\$25,000
 - (4) \$25,001–\$50,000
 - (5) \$50,001–\$75,000
 - (6) \$75,001–\$100,000
 - (7) \$100,001–\$125,000
 - (8) \$125,001–\$150,000
 - (9) \$150,001–\$175,000
 - (10) \$175,001–\$200,000
 - (11) \$200,001–\$250,000
 - (12) \$250,001–\$300,000
 - (13) \$300,001–\$400,000
 - (14) \$400,001–\$500,000



- (15) \$500,001–\$750,000
- (16) \$750,001–\$1,000,000
- (17) \$1,000,001–\$1,500,000
- (18) \$1,500,001–\$2,000,000
- (19) \$2,000,001–\$2,500,000
- (20) \$2,500,001–\$5,000,000
- (21) \$5,000,001–\$7,500,000
- (22) \$7,500,001–\$10,000,000
- (23) \$10,000,001–\$15,000,000
- (24) \$15,000,001–\$20,000,000
- (25) \$20,000,001 and above.

(f) The report published pursuant to this section shall present the required information in an aggregate form that preserves the confidentiality of the proprietary information of individual registrants.

O

